

All of claims 1-18 stand rejected. Specifically, claims 1-16 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Applicants' admitted prior art (page 2, second paragraph), and further in view of FR 1.243.333. While claims 17 and 18 stand rejected per the Examiner's comments pertaining to the Applicants' arguments filed on February 28, 2002, it is unclear as to the basis of the rejection. Applicants respectfully request reconsideration of these rejections.

The Examiner asserts that the Japanese Publication No. 200254768 (hereinafter "the '768 publication"), is Applicants' "admitted prior art". Applicants respectfully disagree with the Examiner. The '768 publication is not Applicants' "admitted prior art". Section 2129 of the MPEP indicates that "when applicants state that something is prior art, it is taken as being available as prior art against the claims. *In re Nomija*, 509 F.2d 566,184 USPQ 607,610. The example discussed in § 2129 refers to figures in the application labeled as "prior art" which are then held to be an admission.

Page 2, paragraph 2 of the specification of the present application does not identify the '768 publication as prior art and thus, the reference cannot be identified as "admitted prior art". The reference to the '768 publication in the specification of the present application is a mere explanation by the Applicants of what the inventors have worked on. The discussion of this reference is mainly due to the fact that the inventors did not believe that it taught or suggested the present invention. This was further explained in the Response filed on February 28, 2002 to the November 28, 2001 Office Action, that the '768 publication does not teach or suggest holding the pipe in a manner such that it is moveable in its axial direction without radial dislocation at its end. This discussion was not an admission of prior art. Since Applicants have not admitted that the '768 publication is "admitted prior art," the '768 publication does not qualify

as "admitted prior art" and thus the "applicants admitted prior art" must be removed as a §103(a) reference.

Furthermore, the record reflects that the Applicants have satisfied the requirements of 37 C.F.R. §104, in which the Applicants have established for the record "an earlier date of invention" of the present invention in a WTO member country. Specifically, the priority document for the present application was filed in Japan on January 14, 2000, whereas the '768 publication has a publication date of September 19, 2000. A copy of this priority document has already been filed in the present application. The date of the priority document of the present invention precedes the '768 publication. The Examiner has not used the '768 publication in a rejection, but instead relies on "applicants admitted prior art," which is improper as discussed above.

For all the foregoing reasons, Applicants believe that claims 1-18 are patentable and are in condition for allowance. Reconsideration of the rejections and allowance of all pending claims 1-18 are respectfully requested.

Respectfully submitted,

WEBB ZIESENHEIM LOGSDON
ORKIN & HANSON, P.C.

By 

Blynn L. Shideler
Registration No. 35,034
Attorney for Applicants
700 Koppers Building
436 Seventh Avenue
Pittsburgh, PA 15219-1818
Telephone: 412-471-8815
Facsimile: 412-471-4094
e-mail: webblaw@webblaw.com